

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

MALCOLM A. JOHNSON,

Petitioner,

v.

**9:07-CV-581
(FJS/RFT)**

**ROBERT E. ERCOLE, Superintendent,
Green Haven Correctional facility,**

Respondent.

APPEARANCES

OF COUNSEL

MALCOLM A. JOHNSON

02-A-1996

Green Haven Correctional Facility
P.O. Box 4000
Stormville, New York 12582
Petitioner *pro se*

**OFFICE OF THE NEW YORK
STATE ATTORNEY GENERAL**

120 Broadway
New York, New York 10271
Attorneys for Respondent

ALYSON J. GILL, AAG

SCULLIN, Senior Judge

ORDER

In a Report-Recommendation and Order dated July 28, 2010, Magistrate Judge Treena recommended that this Court deny Petitioner's petition for a writ of habeas corpus and not issue a certificate of appealability with respect to any of Petitioner's claims. *See* Dkt. No. 9 at 14. The parties did not file any objections to this Report-Recommendation and Order.

The Court having reviewed said Report-Recommendation and Order and the entire file in

this matter, the Court hereby

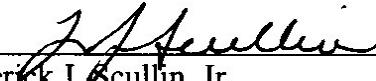
ORDERS that Magistrate Judge Treen's July 28, 2010 Report-Recommendation and Order is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

ORDERS that Petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is **DENIED** and his petition is **DISMISSED**; and the Court further
ORDERS that, because Petitioner has not made a "substantial showing of the denial of a constitutional right" pursuant to 28 U.S.C. § 2253(c)(2), no certificate of appealability shall issue with respect to any of Petitioner's claims, 28 U.S.C. § 2253(c)(2); and the Court further

ORDERS that the Clerk of the Court shall serve a copy of this Order on the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: August 23, 2010
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Court Judge